IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

ORDER

DEVI SINGH & ORS. VS. STATE

S.B. CRIMINAL REVISION PETITION NO.174/2006 UNDER SECTION 397/401 CR.P.C AGAINST THE ORDER DATED 15.02.2006 PASSED BY SESSIONS JUDGE (FAST TRACK) NAGAUR.

DATE OF ORDER : 22.05.2006.

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr.Sunil Mehta for the petitioners.
Mr.JPS Chaudhary, Public Prosecutor.

BY THE COURT:

This criminal revision petition under Section 397 read with Section 401 CrPC is directed against the order dated 15.02.2006 passed by Sessions Judge (Fast Track), Nagaur (for short "the trial court" hereinafter) in Sessions case No.53/2005, whereby the trial court framed the charges against the petitioners for the offences under Sections 147, 148, 186, 337, 353 IPC and in the alternative Sections 353/149, 395 IPC and under Sections 135, 135KHA and 136 of the Prevention of Damage to Public

Property Act, 1951. Aggrieved by the order impugned, the petitioners have filed the instant revision petition.

I have heard learned counsel for the petitioner as well as learned Public Prosecutor. Perused the order impugned and the challan papers.

The case as set up by the prosecution is that on 31.1.2005 after casting of votes in Gram Panchayat Election at Panchayat Bhawla, while ballot boxes were in the process of sealing at that time, the alleged petitioners came armed with lathis and started man-handling and taken away the ballot papers and the voter list.

Learned counsel for the petitioners submits that taking away the ballot papers is a specific offence, which is provided under Section 135 and 136 of the Representation of People Act, 1951 (for short "the Act" hereinafter) and no offence under Section 395 IPC can be made out. Learned counsel for the petitioners has confined his arguments and challenged only to the extent framing charge for the offence under Section 395 IPC. So far as the other offences are

concerned, learned counsel for the petitioners has not given challenge.

Learned counsel for the petitioners has placed reliance on a decision in the case of ***Loharchary & Ors. vs. State of Rajasthan reported in 1989 Cr.LR (Raj). Page 266***, wherein this Court held as under:

> "A bare reading of this section shows that where the offence is committed by a person by taking away ballot-boxes or ballot-papers, he would commit offence u/s. 136 of the Act, which should be committed outside the polling-station, because, a similar offence committed by any person inside the polling-station, is an offence, u/s. 135 of the Act. If a person takes away ballot-boxes or ballot-papers not from the polling stations, but from outside, may be from the road or from any other place, the offence would be covered u/s. 136, of the Act. If the argument of the learned Public prosecutor, is taken to be correct, that would mean that S. 136 of the Act has become redundant. If taking away of ballot-boxes or papers from out side the polling-stations is covered by S. 135, then why the legislature has envisaged S. 136 in the Act? Why there are two different sections? In S. 135, it is specifically mentioned that removal of ballot-

> boxed from inside the polling-stations would be an offence under this section; but, if ballot-boxes or ballot-papers are removed outside the polling-stations, that offence would not fall within the ambit it is for that purpose that the legislature has created S. 136 in the Act; and there is no deeming section/clause in this Act. An offence u/s 379 or u/s 391, is not made out in such cases. The present case is pertaining to election, because, ballot-papers were snatched away. So, this is a case which falls u/s 136, of the Act."

In my view, the trial court fell in error to the extent framing charges for the offences under Section 395 IPC.

Consequently, the revision petition is partly allowed. The impugned order dated 15.2.2006 passed by the trial court to the extent framing charge under Section 395 is set aside. However, the order impugned framing charges for the other offences stand confirmed.

(H.R. PANWAR)J.

Anil/